In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 834

FRANK NICK ZIZZO, ALEXANDER STASNICK, HUGO A. LAZZARESCHI AND WALTER WOJCIECHOWSKI, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 23-31) is reported at 338 F.2d 577.

JURISDICTION

The judgment of the court of appeals was entered on October 19, 1964. A petition for rehearing was

denied on December 16, 1964. The petition for a writ of certiorari was filed on January 15, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in a prosecution under a criminal statute enacted in September 1961 which punishes participation in a gambling business illegal under State law by persons who have travelled interstate for that purpose, the introduction into evidence of a July 1961 wagering tax return violated the privilege against self-incrimination.

2. Whether Congress may prohibit travel in interstate commerce to promote a gambling enterprise illegal under State law.

STATUTE INVOLVED

18 U.S.C. 1952 (75 Stat. 498) provides in pertinent part:

> Interstate and foreign travel or transportation in aid of racketeering enterprises.
>
> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, man-

agement, establishment, or carrying on, of any unlawful activity.

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion or bribery in violation of the laws of the State in which committed or of the United States.

STATEMENT

A twenty-count indictment returned in the United States District Court for the Northern District of Indiana charged that petitioners traveled in interstate commerce with intent to carry on an illegal gambling enterprise and thereafter carried on this unlawful activity in violation of 18 U.S.C. 1952 and 2 (R. 5-18). After a jury trial, petitioners were convicted.* Petitioner Zizzo was sentenced to concurrent terms of imprisonment for five years and fined

* Before the case was submitted to the jury, counts 1 and 20 (conspiracy counts), and counts 10 and 12 (substantive violations) were dismissed. The jury returned guilty verdicts upon the remaining counts. Under these counts Zizzo was charged under counts 2 through 9, and 13 through 19; Stasnick under counts 2 through 8; Lazzareschi under counts 17 through 19; and Wojciechowski under counts 9 and counts 13 through 16.

$10,000 (R. 337); petitioners Stasnick, Lazzareschi and Wojciechowski were each sentenced to concurrent terms of imprisonment for two years with service of eighteen months of their sentences suspended (R. 338-341).

In 1961 and 1962, petitioner Zizzo operated a bookmaking business in Indiana (R. 106) which employed petitioners Stasnick (also known as Strosky), Lazzareschi and Wojciechowski (R. 167-168, 177-178, 235-236, 240-241). At various times between January and April 1962, Stasnick, Wojciechowski and Lazzareschi were observed driving from Illinois to gambling houses operated by Zizzo in Indiana. Stasnick would drive from Calumet City, Illinois (R. 211, 224-230), and Wojciechowski (R. 206, 211-214, 230-233) and Lazzarescki from their residences in Chicago (R. 202-203). There was evidence that all petitioners accepted wagers in Indiana (R. 151-156, 161, 163-165, 178, 236-237).

In May 1962, Wojciechowski informed an F.B.I. agent that his residence was in Chicago but that he used an Indiana address at the suggestion of his employer (R. 240). Stasnick also told an F.B.I. agent that he used an Indiana address while actually living in Calumet City (R. 238).

On the question whether Zizzo caused or knew of the interstate travel by the others for gambling purposes, the government introduced a federal wagering tax return filed by Zizzo in July 1961. He had there stated that Wojciechowski, an employee, lived at an address in Chicago, Illinois. Places that were rented and used in his gambling

business in Indiana were given as the resident addresses for Lazzareschi and Stasnick, (R. 319-328, 122-124; Government exhibits 1 through 4). In Indiana employer's withholding tax returns for 1961 Zizzo listed Wojciechowski, Lazzareschi and Stasnick as Illinois residents, and in his 1962 return he reported Illinois addresses for Wojciechowski and Lazzareschi (R. 140-143).

ARGUMENT

1. Petitioners were prosecuted under a statute first enacted in September 1961, making it a crime to travel from one State to another for the purpose of engaging in a gambling enterprise illegal under the laws of the second State. They claim that the introduction in evidence of federal wagering tax returns filed by Zizzo in July, 1961, violated Zizzo's privilege against self-incrimination.

The privilege against self-incrimination, however, has application only to information which is incriminating at the time it is furnished. It does not protect a person from the use of information which he has disclosed in the past when he subsequently commits a crime. Thus, information in a form compelled by law to be filed, such as an income tax return, can be used in a criminal prosecution committed after the return is filed. Here petitioner Zizzo was not forced to confess a federal crime; he was not prosecuted for gambling nor for any gambling activities before the returns were filed. Rather, he and the other petitioners were prosecuted for traveling in interstate com-

merce after September 1961 for the purpose of furthering an illegal gambling business. When the interstate travel statute was enacted in September 1961, petitioners had the option either to continue wagering subject to this enactment or to discontinue their gambling activities. Indeed, Zizzo might have simply replaced his out-of-State employees with local assistants. The disclosures in the July 1961 returns that Zizzo intended to gamble in the future and that he knew that some of his employees lived in Illinois did not give petitioners any special immunity to ignore the limitation that Congress subsequently placed on interstate travel tied to gambling activities. Accordingly, their non-compliance with the condition that Congress imposed did not render this evidence inadmissible. See *United States* v. *Kahriger*, 345 U.S. 22 and *Lewis* v. *United States*, 348 U.S. 419.

2. The statute here involved is designed to prevent interstate travel to facilitate illegal gambling, as well as prostitution, narcotics traffic and the illegal distribution of liquor. We think it clear that Congress had the power, under the Commerce Clause, to enact such legislation. What this Court said in *Brooks* v. *United States*, 267 U.S. 432, 436-437, in upholding the act prohibiting the interstate transportation of stolen vehicles (18 U.S.C. 2312), is applicable here: "The objection to the Act cannot be sustained. Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty or the spread of any evil or harm to the

people of other States from the State of origin. In doing this it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce" See, also, *Hoke* v. *United States*, 227 U.S. 308, and *Caminetti* v. *United States*, 242 U.S. 470. Nor does it matter whether the gambling enterprise is, in most respects, a purely local operation. See *Heart of Atlanta Motel, Inc.* v. *United States*, decided December 14, 1964. The statute does not prevent anyone from traveling interstate; it merely prohibits travel for the specific purpose of engaging in a gambling operation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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